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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226968
Party	Defendant Ashleigh Mason, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MAKIN INTERNATIONAL, LLC, a California limited liability company, Opposer, v. ASHLEIGH MASON, LLC, a California limited liability company, Applicant.	)	Opposition No.: 91-227,062 Opposition No.: 91-226,968

APPLICANT'S REPLY TO
OPPOSER'S RESPONSE TO SHOW CAUSE ORDER

Applicant respectfully submits this Reply to Opposer's Response to Show Cause Order, filed with the Board on May 4, 2016, in the above-referenced proceedings. As Opposer did not adequately show cause as to why Opposition Nos. 91-227,062 and 91-226,968 should not be dismissed as contemplated by Trademark Rule 2.102(b), Applicant respectfully urges the Board to dismiss these proceedings in their entireties.

Trademark Rule 2.102(b) provides, in relevant part:

> Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person in whose name the extension was requested was identified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

See, Cass Logistics Inc. v. McKesson Corp., 27 USPQ2d 1075, 1076 (TTAB 1993).

An attorney/client relationship is not considered in privity under Rule 2.102(b). *In re Spang Industries, Inc*., 225 USPQ 888 (Comm'r Pat 1985). Therefore, the sole question before the Board is whether or not the misidentification of Trademark Lawyer Law Firm is a type of mistake contemplated

by Rule 2.102(b), such that the Board may entertain the oppositions filed by Opposer. The Rule is clear that it is **not**.

The term "mistake," within the context of the rule, means a mistake in the form of the potential opposer's name or its entity type. *Cass Logistics Inc. v. McKesson Corp*., 27 USPQ2d 1075, 1077 (TTAB 1993). The term "mistake" does not encompass a "clerical error" in which a party's attorneys are identified as a potential opposer. *Id.* ("The term 'mistake' does not encompass the recitation of a different existing legal entity that is not in privity with the party that should have been named."); *see also, In re Spang Industries, Inc.*, 225 USPQ 888 (Comm'r Pat 1985) (a party cannot claim the benefit of an extension granted to its attorneys).

Opposer contends that the Board should allow Opposer to institute these proceedings because it sent a demand letter to Applicant and therefore, it believes that Applicant had notice that Opposer intended to file oppositions against Applicant. Opposer has cited no authority permitting substitution of a completely unrelated party as the "real party in interest" in an opposition, ***with or without notice***. Indeed, such a "notice" exception is not included in Rule 2.102(b), which is clear on its face. There are only two possible exceptions to the rule that an opposition filed during an extension of time must be filed in the name of the person to whom the extension was granted. Allowing an exception for a "clerical error" as sought by Opposer, regardless of whether or not Applicant is presumed to have notice, would entirely circumvent Rule 2.102(b).

Opposer argues that an exception should be made for its clerical error and argues that the cases cited by the Show Cause Order do not apply to it because in those cases, the applicant was unaware of the potential conflict between the parties' marks. However, those facts cannot be assumed from the cases, and arguably, because such facts were not discussed, this is an indication that any such "notice" factor is not a consideration in determining the applicability of Rule 2.102(b). Opposer also argues that it will be unfairly prejudiced if these oppositions are dismissed, however, as it is early in the proceedings

and Opposer still has the ability to cancel the registration, Opposer will not be unfairly prejudiced. *Cass Logistics Inc. v. McKesson Corp*., 27 USPQ2d 1075, 1077 (TTAB 1993).

Accordingly, as Opposer failed to show cause as to why these proceedings should not be dismissed under Trademark Rule 2.102(b), Applicant respectfully requests that the Board dismiss Opposition Nos. 91-227,062 and 91-226,968 in their entireties.

Dated: May 26, 2016

Respectfully submitted,

By: 

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that a true copy of the foregoing APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO SHOW CAUSE ORDER is being filed electronically with the United States Patent and Trademark Office Trademark Trial and Appeal Board and being served by First Class Mail, postage prepaid, on May 26, 2016, on the following:

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